United Nations A/C.6/54/SR.12

General Assembly
Fifty-fourth session

Official Records

Distr.: General
4 February 2000
English
Original: Spanish

Sixth Committee

Summary record of the 12th meeting
Held at Headquarters, New York, on Thursday, 21 October 1999, at 10 a.m.

Chairman: Mr. Kawamura ..... (Japan)

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00-23038 (E)

The meeting was called to order at 10.15 a.m.

Agenda item 158: Establishment of an international criminal court (*continued*) (PCNICC/1999/L.3/Rev.1 and L.4/Rev.1, A/54/98)

1. **Mr. Dos Santos** (Mozambique), speaking on behalf of the Southern African Development Community (SADC), said that it must be ensured that the International Criminal Court became operational as soon as possible. Many SADC countries had already signed the Statute and were making preparations to ratify it; for example, in July 1999, 12 of them had met at Pretoria, South Africa, and adopted a ratification kit: it was hoped that other regions would follow that example. Non-governmental organizations had played an important role in the adoption of the Statute, and their advisory role would be critical during the ratification phase.

2. SADC would continue to support the Preparatory Commission, which had made significant progress; it hoped that the 1999 resolution on the International Criminal Court would be adopted without a vote, as in 1998.

3. SADC urged all countries to continue to contribute generously to the trust fund established by the General Assembly to facilitate the participation of developing countries in the work of the Preparatory Commission.

4. **Ms. Taddei** (San Marino) said that San Marino had been one of the first States to ratify the Statute of the International Criminal Court and called upon those States which had not yet done so to try to ratify it at an early date, in order to secure the 60 ratifications that were needed as soon as possible. Her Government took note of the initiatives undertaken by several regional organizations, States and non-governmental organizations to encourage the signing and ratification of the Statute, particularly the Intergovernmental Regional Caribbean Conference, at which the Port-of-Spain Declaration had been adopted, the international seminar on victims' access to the International Criminal Court, the informal inter-sessional meeting held in June 1999 at the International Institute of Higher Studies in Criminal Sciences in Siracusa, Italy, the organization by the United Nations of briefing sessions on ratification and implementation legislation of the Rome Statute, and the establishment of a trust fund to facilitate the participation of the developing and least developed countries in the work of the Preparatory Commission.

5. The Preparatory Commission had achieved progress in drafting the Rules of Procedure and Evidence and in defining the Elements of Crimes. Her delegation noted that a working group on the crime of aggression had been established, and that, in view of the complexity of that work, further consultations would need to be conducted at some point.

6. **Ms. Mekhemar** (Egypt), referring to the formal aspects of the elements of crimes, asked, first, whether the comments of delegations in that respect had legal value and, if so, to what extent they would be binding on the Court, and, second, whether those comments could be incorporated into the Statute if they were regarded as complementary to the Elements of Crimes. No restrictive or unjustified interpretations should be made, such as the interpretation that certain acts which were inherently criminal became legitimate when they formed part of a State security policy.

7. With regard to the treatment of the legal concept of criminal intent, her delegation believed that no conditions should be added that would affect that concept and might alter the definition of a crime or its nature (for example, that there was express criminal intent or that accompanying circumstances should be taken into account).

8. With regard to deportation or forcible transfer of the civilian population from a territory by an occupying State, article 7, paragraph 1 (d), of the Statute defined those acts as crimes against humanity; there was no justification for the proposals that conditions should be imposed on the elements of those crimes (for example, that such acts gave rise to demographic changes or were detrimental to the economy of the occupied territory, or did not form part of an urbanization project and were not being carried out for security reasons). Her delegation felt that the proposal of the Arab States in that respect most faithfully reflected the spirit and letter of the Statute; it was regrettable that an attempt had been made to politicize the crime of deportation or forcible transfer by linking it to the Arab-Israeli conflict.

9. Furthermore, when elements of the crime of genocide or of war crimes were used to define crimes against humanity, the specific characteristics of each type of crime needed to be taken into account very carefully.

10. Her delegation welcomed the establishment of a working group on the definition of the crime of aggression and, in that respect, supported the proposal of the Group of Arab States, which was based on General Assembly resolution 3314 (XXIX), although it was also prepared to study the other proposals that had been put forward. Her delegation believed that it was necessary first to define the crime of aggression at the intellectual level, and then to designate the competent body.

11. Her delegation welcomed the progress made with regard to the Rules of Procedure and Evidence, but the instrument which was being drawn up had to be universally accepted and could not exclusively serve the interests of the few. Lastly, the commendable effort to ensure that the Statute had the broadest possible support should not run counter to what had already been agreed upon in Rome; otherwise the Statute would be unusable.

12. **Mr. Vazquez** (Ecuador) said that his delegation supported the statement made by the representative of Mexico on behalf of the Rio Group. With regard to the work of the Preparatory Commission, which had made considerable progress, his delegation was in favour of holding two sessions during the first half of 2000 in order to complete the documents on Elements of Crimes and on the Rules of Procedure and Evidence, and another session in the second half of 2000 to take up the definition of the crime of aggression. In drafting the document on Elements of Crimes, the Preparatory Commission should abide by the Statute and should not alter it in spirit or letter; as to the Rules of Procedure and Evidence, they should be drafted so as to facilitate the administration of justice on the part of the Court, with the appropriate procedural guarantees but avoiding unnecessarily lengthy or cumbersome proceedings, and maintaining a balance between civil law and common law as far as possible. The establishment of a working group on the crime of aggression was an important step. Lastly, he noted that in October 1998, Ecuador had signed the Rome Statute, which would be submitted for consideration by the National Congress over the next few days.

13. **Mr. Holmes** (Canada) said that in adopting the Rome Statute the international community had demonstrated its awareness of the problems of impunity and the need to bring transgressors to justice. The Statute provided the framework for an independent and effective Court with the necessary safeguards to ensure that it would operate in a credible and responsible manner. The adoption of the Statute also showed that human security and national security were not contradictory goals but mutually supportive.

14. His delegation was pleased that 88 States had signed the Statute; four had already ratified it, and while 60 ratifications would be sufficient for the Court to begin operating, more would help to enhance its credibility and give it jurisdiction over as much of the world as possible. Canada had shown its support for the establishment of the Court in bilateral and multilateral discussions and had contributed to the numerous initiatives to promote awareness and support for the Statute.

15. His delegation recognized that the ratification process was not simple. The Statute was a complex document, with important legal implications at the domestic level. His Government was therefore exploring ways of sharing expertise with other States on the technical aspects of ratification. It would shortly be introducing legislation in Parliament to implement the Statute, probably in the next few months.

16. The Rules of Procedure and Evidence and the Elements of Crimes would need to be developed so that the Court could fulfil its mandate. His delegation hoped that those documents would satisfy hesitant States and it would continue to work to address any remaining concerns in that regard. He welcomed the constructive atmosphere that had prevailed in the Preparatory Commission and the progress made in developing the Rules and the Elements of Crimes. Much, however, remained to be done before 30 June 2000 and his delegation trusted that the General Assembly would provide the Preparatory Commission with the necessary resources to ensure completion of its work.

17. If the international community manifested the necessary commitment, the Court could in the next century serve as an important pillar of an international regime of justice that might prevent some of the excesses that had been committed during the twentieth century.

18. **Mr. Šimonović** (Croatia) said that Member States had responded to the absence of adequate protective mechanisms against breaches of international humanitarian law by strengthening the concepts of individual criminal responsibility and universal jurisdiction. The Statute of the International Criminal

Court reflected the first of those concepts by establishing that nobody, not even the highest State officials, could be exempt from criminal responsibility. The principle of universal jurisdiction, meanwhile, which played an important role in the protection of international law, had developed from the growing belief that serious breaches of international humanitarian law must be prevented, irrespective of the nationality of the offenders.

19. The establishment of the ad hoc tribunals for the former Yugoslavia and Rwanda had been important steps, but the very fact of their establishment raised the question of selective justice. His delegation therefore welcomed the international community's latest efforts to ensure identical standards for respect for international humanitarian law throughout the world until the Court commenced operation. The Court's universality would enable it to deal more consistently with all members of the international community, in accordance with the fundamental principle of the sovereign equality of States, and to avoid political arbitrariness.

20. The International Criminal Court was supposed to complement rather than supersede national courts. In Croatia a trial relating to war crimes committed during the Second World War had recently been concluded. That showed that war crimes were not subject to any statute of limitations and that the Croatian judicial system had the capacity to deal with even the most complex and politically charged cases.

21. His Government had signed the Statute on 12 October 1998 and intended to ratify it in the near future. Since the country's constitutional and criminal legislation had already undergone significant changes in the context of the International Criminal Tribunal for the Former Yugoslavia, there was no particular need for new adjustments.

22. His delegation had sought to have built into the Rules of Procedure and Evidence mechanisms to prevent obstruction of the Court's work. It therefore placed particular emphasis on the development of clear and unequivocal Rules that would not allow States to evade their obligations and would not need frequent amendment. It was also important that they should incorporate the legal standards of due process, to be consistent with the world's main legal systems. Additionally, the Elements of Crimes should not be so broad as to delay completion of the Rules any further.

23. Lastly, his delegation would be following the deliberations of the working group on the definition of aggression, to which it attached great importance, given that Croatia had recently been a victim of aggression itself.

24. **Mr. Hamid** (Pakistan) said that the establishment of the International Criminal Court would be an effective deterrent to the commission of heinous crimes that continued to be a burden on the conscience of humanity. The Statute would ensure that those committing such crimes would not be able to do so with impunity.

25. Although his delegation had had a number of concerns with regard to some provisions of the Statute, it had supported its adoption on the understanding that the Preparatory Commission would make every effort to alleviate such concerns in drafting the Rules of Procedure and Evidence and the Elements of Crimes. Clear and unambiguous Rules on the Court's practice would help States safeguard their positions and encourage them to become parties to the Statute.

26. His delegation's reservations, enunciated on many occasions, related to the provisions of the Statute that could impinge on the sovereignty of the State. The Court should complement and not supplant the national legal system, yet a number of provisions — such as the proprio motu role given to the Prosecutor to initiate investigation, the role assigned to the Security Council to initiate proceedings through referral and the fact that a trial conducted by a State could be challenged — tended to undermine the basic principle of complementarity, which was the essential element on which the jurisdiction of the International Criminal Court should be based.

27. Lastly, his delegation welcomed the establishment of a working group to define the crime of aggression and hoped that with good will on all sides it would be possible to arrive at an acceptable definition of that crime.

28. **Mr. Da Fontoura** (Brazil) supported the statement made by the representative of Mexico on behalf of the Rio Group and said that the adoption of the Rome Statute had brought a long-held aspiration of the international community to fruition. The ad hoc tribunals set up after the Second World War had been the original inspiration for the 1998 Diplomatic Conference in Rome; the more immediate motive had been the sense of public outrage provoked by the

tragedies in the former Yugoslavia and Rwanda almost two generations later.

29. Brazil had played an active role in the consultations and negotiations leading up to the Rome Conference and had voted in favour of the Statute. Despite the technical complexities involved, a document had been prepared that took the different legal traditions of the participating States into account and was acceptable to most countries.

30. Almost 90 countries had already signed the Statute, which was indicative of the international community's firm determination to establish the Court as soon as possible. Accordingly, Brazil had organized a seminar in Brasilia for Brazilian and foreign legal experts in early October 1999. In that context, Brazil appreciated the support and interest of the United Nations, whose representative at the seminar had made a constructive contribution to the discussions. The seminar conclusions would be made available to those interested in organizing similar events in other countries and would help the Government of Brazil in its deliberations on the question of signing the Statute and the subsequent submission of that instrument to Congress for ratification.

31. Brazil intended to participate actively in the next session of the Preparatory Commission in order to develop consensual wording which would strike a balance between the legitimate aim of dissuading and repressing massive human rights violations and the prudence indispensable to the rule of law. It was important that all delegations should show flexibility in order to achieve the desired result.

32. His delegation supported the decision to establish a working group on the crime of aggression, as such a step would respond to the legitimate wish of many delegations and was a practical way of tackling that complex and controversial issue promptly.

33. The work to be carried out in the coming months would demonstrate the international community's determination to put an end to the impunity and arrogance of those who committed crimes against humanity. The credibility and effectiveness of the Court depended on the success of such efforts.

34. **Mr. Malenovský** (Czech Republic) said that one year after the adoption of the Statute of the International Criminal Court, 88 States had signed it and four had ratified it. However, the Statute would be a dead letter until at least 60 States had ratified it and work on the Rules of Procedure and Evidence and on the Elements of Crimes had been completed. The Court needed to have a universal character, and no State should be excluded from the process of establishing it, whatever its opinion on the matter.

35. The Preparatory Commission was considering the elements of war crimes, the wording of which should be adapted to the definitions contained in the Rome Statute without adding new elements that might limit the Court's jurisdiction. With regard to the Rules of Procedure and Evidence, he commended the constructive climate in which delegations had endeavoured to reach a consensus and finalize the text. He noted with satisfaction that the rules did not focus only on the principles of a fair trial, but also sought to obtain justice for the victims of crimes, thus distinguishing the International Criminal Court from other tribunals that had served as precedents.

36. He trusted that the work on the Rules of Procedure and Evidence and the Elements of Crimes would be completed by 30 June 2000, as anticipated, despite the differences of position that existed among delegations. Having considered the implications of ratification of the Rome Statute for domestic law, the Government of the Czech Republic was preparing the necessary laws to incorporate it into its legislation.

37. **Mr. Hetesy** (Hungary) said that Hungary had signed the Statute of the International Criminal Court on 15 January 1999 and had begun to take steps to ratify it. His country had also participated actively in the work of the Preparatory Commission, which had supported the joint proposals of Hungary, Switzerland and Costa Rica on the Elements of Crimes.

38. At times, the Commission had been slowed by extensive debates on proposals that were more concerned with form than with substance. Greater flexibility was required so as not to hinder consideration of substantive matters.

39. The International Criminal Court was by definition complementary to national jurisdiction as a tool for combating genocide, crimes against humanity and war crimes. The experience of the tribunals for the former Yugoslavia and Rwanda had already proved that such judicial institutions should concentrate only on the most serious crimes. Furthermore, the Court must be universally accepted, and he noted with satisfaction that even States which had voted against the Statute

had participated actively in the work of the Preparatory Commission. Consequently, the Preparatory Commission appeared to be the most appropriate forum for reconciling differences of opinion. Hungary was in favour of holding three sessions of the Preparatory Commission in 2000.

40. Hungary's activities related to the Rome Statute were not limited to the framework of the United Nations, as evidenced by the International Conference on the Ratification of the Statute of the International Criminal Court held in Budapest on 1 and 2 October 1999. A number of non-governmental organizations together with experts from various European Governments had taken part in the Conference, which had been organized by the Constitutional and Legal Policy Institute in collaboration with the Central European University. Participants had shared information on the participation process. Such regional conferences could be very useful for clarifying some practical aspects of the Rome Statute and furthering the work of the Preparatory Commission.

41. **Mr. Rodríguez Cedeño** (Venezuela) said that his country had actively participated in the negotiations on the Statute of the International Criminal Court, had signed the Statute and was considering the possibility of ratifying it. Now that the Statute had been adopted, it was essential to finish correcting the text as soon as possible and for the Secretariat to issue the final version and transmit it to Governments. The Preparatory Commission for the International Criminal Court had made considerable progress owing to the willingness of all States to conclude its work on time so that the new Court could become operational.

42. It was essential to define the elements of the crime that came under the Court's jurisdiction; thus the work that had been accomplished was significant. The crime of aggression also needed to be defined in order to ensure the Court's effectiveness; to that end, the definition adopted by the General Assembly in its resolution 3314 (XXIX) should be taken into consideration and the various proposals submitted by States should be used as a basis, particularly those which sought to set out a clear and complete definition of that crime. Furthermore, the working group on aggression should take trends in international doctrine into account in order to reach an adequate definition that was acceptable to all. With regard to the Rules of Procedure and Evidence, he welcomed the fact that the principles and criteria of the various legal systems had been taken into consideration.

43. All the instruments and decisions to be adopted in connection with the Court should be compatible with the Statute, in keeping with the principles governing the drafting of the laws deriving therefrom. Flexibility was also called for if the Court was to become operational and have a universal character.

44. **Mr. Hoffman** (South Africa) said that, as the representative of Mozambique had indicated, the States members of the Southern African Development Community (SADC) considered the establishment of an international criminal court to be a priority. The recent events in East Timor, Burundi, Rwanda and Sierra Leone underscored that need, and States should begin to ratify the Court's Statute as soon as possible. In that connection, a conference of SADC legal experts had been held in South Africa from 5 to 9 July 1999, to coordinate the Statute ratification process in South Africa and prepare a model ratification kit for all the countries of the Community.

45. The model ratification kit provided that the Statute of the International Criminal Court would have effect in the national territory and that the Court would sit in the national territory of the country concerned, while the Judges, the Prosecutor and the Registrar would enjoy the same privileges and immunities as the heads of diplomatic missions. Furthermore, any person committing any of the crimes specified in the Statute outside the national territory could be prosecuted in the national courts as if the crime had been committed within the national territory. The national courts would have extraterritorial jurisdiction in respect of the crimes referred to in the Statute, except for offences under article 70.

46. South Africa acknowledged that the International Criminal Court would rely immensely upon the good will of States to carry out its task effectively. To that end, an interdepartmental committee had been constituted in South Africa to study the role that each Department might play in cooperating with the Court. The process of ratifying the Statute was taking place parallel to the drafting of legislation which was to be incorporated into domestic law. It was the intention of the South African Government to proceed with ratification of the Statute as a matter of urgency.

47. His delegation was concerned that corrections might still have to be made to the Statute and hoped

that a definitive version would be issued soon. It was likewise important that the drafting of the Rules of Procedure and Evidence and the definition of Elements of Crimes should be finalized as soon as possible.

48. **Mr. Al-Suliman** (Saudi Arabia) said that the establishment by the Preparatory Commission of a working group to define the crime of aggression was a step in the right direction. Aggression was a very serious offence and should have a clear definition. Another of the crimes considered by the Preparatory Commission was defined in article 8, paragraph 2 (b) (viii) of the Statute, relating to the transfer of population by an occupying Power. That crime was known to have been committed in the past and was still being committed: it was therefore important to define it accurately. The act had been classified as a crime in other international legal instruments.

49. His delegation fully recognized the importance of establishing an International Criminal Court, provided that it discharged its functions properly in order to keep pace with the latest developments in contemporary international relationships.

50. **Mr. Mochochoko** (Lesotho) said that the commission of horrific mass crimes while their perpetrators remained free made the early establishment of the International Criminal Court a top priority. The Statute should enter into force as soon as possible.

51. The Preparatory Commission must finalize its work on the Rules of Procedure and Evidence and Elements of Crimes by 30 June 2000 at the latest. Two sessions of three weeks each, as well as an inter-sessional meeting, would therefore be required in the coming year. It was gratifying to see that just over a year after the conclusion of the Rome Treaty, 88 States had already signed it and four had ratified it. Lesotho had already signed the Statute and had begun to lay the groundwork for its ratification on the basis of the model developed at the intergovernmental meeting of experts organized by SADC in Pretoria in July 1999. It was expected that the necessary ratification papers would be submitted to the Government for approval by the end of the year, thus paving the way for Lesotho's ratification of the Statute as soon as possible.

52. The Preparatory Commission had made encouraging progress, and it was to be hoped that in forthcoming sessions delegations would show more flexibility so as to facilitate more tangible results. Although it was important that the greatest possible number of States should participate in the Court, the Court's universality should not be pursued at the expense of the integrity of the Statute and the delicate balance agreed to in Rome.

53. Participation by all delegations in the process of establishing the Court was still important. It was regrettable that no new contributions had been received for the trust funds, and his delegation supported the call for States to make voluntary contributions to those funds in order to meet the costs of participation of experts from least developed countries.

54. **Mr. Hanson-Hall** (Ghana) supported the early establishment of an effective and fair International Criminal Court with workable processes that would allow it to enjoy the support of the majority of Member States.

55. His delegation was pleased that the Preparatory Commission had been able to consider the Rules of Procedure and Evidence, which were crucial to the operations of the Court. The Commission had also dealt with the critical issue of the procedures to be followed by the Prosecutor in order to proceed with an investigation as well as the procedures for applications for review of a decision by the Prosecutor not to proceed and for confirmation of charges. His delegation was also gratified that the Preparatory Commission had been able to consider the Elements of Crimes, in particular the crime of genocide and grave breaches of international law, which showed the international community's determination to combat those aberrations.

56. Four countries had ratified the Statute, and his Government had begun to take the steps necessary for ratification and to incorporate the Statute into domestic law; he encouraged all States to follow that example.

57. The crime of aggression, by whomsoever perpetrated, should be severely punished. A definition of aggression that would be clear and unambiguous and acceptable to all States should therefore be reached. The matter was urgent, and he therefore welcomed the establishment of a working group on the subject. His delegation considered that the crime of aggression should be defined in accordance with the extensive provisions of General Assembly resolution 3314 (XXIX).

58. His delegation supported the allocation of six weeks for sessions of the Preparatory Commission prior to 30 June 2000 and the holding of another session before the end of that year to conclude the work outlined in resolution F of the Conference of Plenipotentiaries.

59. The crimes covered by the Statute of the Court had plagued mankind from time immemorial. The establishment of the Court would be a clear signal that the international community would not countenance the perpetration of those crimes with impunity.

The meeting rose at 12.10 p.m.